IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

WP(C).No. 36646 of 2007(K)

EP 687/07 in OS.687/2005 of SUB COURT, KOCHI

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PETITIONER:

ING VYSYA BANK Ltd., a corporate, constituted and functioning under the Banking Companies having its head office at Bangalore and branches among other places at M.G. Road, Ravipuram, Cochin 16, rep. by the Asst. Maqnager, ING Vysya Bank, Retail Banking Division, M.G. Road, Ravipuram, Cochin-16, Ernakulam, duly authorised and empowered to represent the petitioner.

BY ADV. SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.HARISH GOPINATH
SRI.V.VINAY MENON
SMT.KVP.JAYALEKSHMY
SRI.M.AJAY (IRUMPANAM)

RESPONDENT:

Varghese T.V., S/o. T.C. Varghese,
Thekkekkara House, Chullickal, Kochi - 5.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/12/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.36646 of 2007

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Dated this the 11th day of December, 2007.

JUDGMENT

This writ petition is filed to issue a writ of certiorari and to quash the order dated 7.11.07 directing issuance of notice on the execution petition under Order 21 Rule 22 and to issue an order of attachment of the property scheduled in the attachment petition.

2. It is the case of the writ petitioner that it has obtained a decree against the defendant and has put it in execution. Though the notice is not mandatory since two years have not been elapsed after passing of the decree, the court has issued a notice and had not granted any attachment. According to the petitioner, respondent is threatening that he will transfer the property by 14.12.2007 and therefore the writ petition is filed for appropriate directions.

3. When a decree holder holds a decree and has moved an

application for attachment of sale of the immovable property mentioned in the decree schedule, it is the duty of the court to preserve that property. Otherwise, it will be equivalent to defeating the plaintiff, who has obtained a decree. Therefore the writ petition is disposed of as follows:

(1) The executing court is directed to pass some orders to preserve the property after hearing both sides.

(2) The respondent in the writ petition is restrained from alienating or charging the property comprised in Sy.No.830/1 of Thoppumpady Village, till an order is passed by the court below as directed above.

M.N.Krishnan,
Judge.

s/ess 11/12